

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
CIVIL ACTION NO.: 5:24-cv-235

AMP SERVICES, LLC, ICECOLD, US  
LLC, TREE SPROUT LLC AND  
AUSTIN MCCOY POWELL,

Plaintiffs,

v.

AUTO-OWNERS INSURANCE  
COMPANY,

Defendant.

**NOTICE OF REMOVAL**

Please take notice that Defendant, Auto-Owners Insurance Company (“Auto-Owners”), by and through undersigned counsel, hereby removes this action from the Superior Court of Caldwell County, North Carolina to the United States District Court for the Western District of North Carolina.

**Nature of the Action**

1. On or about September 12, 2024, Plaintiffs, AMP Services, LLC, Icecold US LLC, Tree Sprout LLC, and Austin McCoy Powell (collectively “Plaintiffs”), filed a complaint in the Superior Court of Caldwell County, North Carolina alleging, or attempting to allege, claims for breach of contract, violations of the Unfair and Deceptive Trade Practices Act, and bad faith against Auto-Owners. *See* Complaint, attached hereto as Exhibit “A.”

2. The matter arises out of an insurance coverage dispute whereby Plaintiffs made a claim for property damage under an insurance policy issued by Auto-Owners. *See* Complaint.

**Federal Jurisdiction Exists**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because complete diversity exists among the parties and the amount in controversy exceeds seventy-five thousand dollars (\$75,000), exclusive of interest and costs.

4. Auto-Owners was served with the Complaint through the North Carolina Department of insurance on October 8, 2024.

5. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely because it is filed within 30 days of service of process on Auto-Owners.

**Complete Diversity Between Plaintiff and Defendant Exists**

6. According to Plaintiffs' Complaint, each of the Plaintiffs are residents or citizens of North Carolina. *See* Complaint at ¶¶ 1-4.

7. According to Plaintiffs' Complaint, Auto-Owners is a citizen of Michigan. *See* Complaint at ¶5.

8. For diversity purposes, Plaintiffs and Auto-Owners are citizens of different states.

9. As required by 28 U.S.C. § 1332(a) and (c), complete diversity exists between the parties.

### **The Amount in Controversy Exceeds \$75,000**

10. “The amount in controversy is determined by considering the judgment that would be entered if the plaintiff prevailed on the merits of his case as it stands at the time of removal.” *McCoy v. Erie Ins. Co.*, 147 F.Supp. 2d 481, 489 (S.D.W.Va. 2001). That is, “the pecuniary result ... which [a] judgment would produce.” *Dixon v. Edwards*, 290 F.3d 699, 710 (4th Cir. 2002) (citation omitted).

11. In determining the amount the Complaint places in controversy, the Court is not required to leave its common sense behind. *See Carver v. Phoenix Ins. Co.*, 2012 U.S. Dist. LEXIS 57060 (M.D.N.C. 2012). Here, judicial experience and common sense permit the reasonable conclusion that more than \$75,000 is at issue here.

12. Plaintiffs allege that they suffered damages for breach of contract in an amount “in excess” of \$25,000. *See* Complaint at ¶¶ 42-43.

13. In addition to the alleged breach of contract damages, Plaintiffs assert, or attempt to assert, a cause of action for alleged bad faith and violations of the Unfair and Deceptive Trade Practices Act. *See* Complaint at ¶¶ 44-51.

14. As a result of the cause of action for alleged violations of the Unfair and Deceptive Trade Practices Act, Plaintiffs, if successful, would be entitled to treble damages and attorney fees under N.C. Gen. Stat. § 75-1.1 et. seq. *See* Complaint at ¶ 48.

15. While Auto-Owners denies Plaintiffs’ allegations, Plaintiffs’ Complaint places these categories of damages at issue.

16. When actual, incidental, consequential, treble damages and attorney fees are alleged, Plaintiffs’ Complaint places more than \$75,000.00 in controversy.

**Procedural Requirements Are Satisfied and This Removal is Proper**

17. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served to date are attached hereto as exhibits.

18. All defendants are parties to this removal.

19. Venue is proper in this Court for this removed action pursuant to 28 U.S.C. § 1446(a) as the United States District Court for the Western District of North Carolina is located in the district in which the state court action is pending.

20. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the Superior Court of Caldwell County, North Carolina.

**Conclusion**

21. Because complete diversity of citizenship exists between the parties to this action and the amount in controversy exceeds \$75,000, this action is properly removable.

22. By filing this Notice of Removal, Auto-Owners does not waive any claims or defenses available to it.

23. Auto-Owners hereby reserves the right to amend or supplement this Notice of Removal.

24. Auto-Owners respectfully requests that this Court allow them the opportunity to brief and argue before this Court any issue or question concerning the removal of this case in the event that remand is sought by Plaintiffs or otherwise considered by the Court.

WHEREFORE, Auto-Owners, by and through undersigned counsel, hereby give notice that the above-entitled matter has been timely removed to this Court.

This the 6<sup>th</sup> day of November, 2024.

/s/ Jeffrey B. Kuykendal  
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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served upon all counsel of record by email and by depositing a copy of the same in an official depository of the U.S. Mail in a postage-paid envelope addressed as follows:

Email: [dean@amoskapral.com](mailto:dean@amoskapral.com)  
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This the 6<sup>th</sup> day of November, 2024.

/s/ Jeffrey Kuykendal  
JEFFREY B. KUYKENDAL